

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

IN RE:

**RAIN TREE HEALTHCARE OF
WINSTON SALEM, LLC**

Debtor.

Chapter 11

Case No. 16-32071

MOTION TO DISMISS CASE

J & F Partners, LLC (“J & F Partners”) landlord of the Debtor and creditor herein, files this Motion to Dismiss pursuant to Section 1112(b) to dismiss this case for cause and to prohibit the Debtor from refiling a bankruptcy case in this district for a period of 6 months from the date of the dismissal. In support of its Motion J & F Partners shows the Court as follows:

1. On December 30, 2016, the Debtor filed its voluntary petition.
2. On January 10, 2018, J & F Partners filed a Motion for Relief from the Automatic Stay [Dkt. 15] (“Stay Relief Motion”).
3. This Court granted the Stay Relief Motion in an Order entered on January 30, 2017 [Dkt. 45].
4. On January 31, 2017 the Debtor filed an Emergency Motion Requesting Reconsideration of Order Lifting the Automatic Stay (“Emergency Motion”) [Dkt. 58].
5. This court held a hearing on the Emergency Motion on February 8, 2017.
6. This Court entered its Order on Emergency Motion Requesting Reconsideration of Order Lifting the Automatic Stay [Dkt. 70] on February 17, 2017 (“Order on Emergency Motion”) denying the relief requested by the Debtor.

7. In its Order on Emergency Motion, the Court found that “the Debtor presented virtually no evidence that an effective reorganization is realistically possible.” *Order on Emergency Motion at p. 6.*

8. This Court further noted that in order to convince the Court that reorganization was realistically possible, the Debtor “would have needed to establish that it could assume the lease given the current arrearage.” *Id.*

9. The Debtor testified it did not have the ability to cure the arrearage on the lease and the representative of J & F Partners testified that they would not accept payments over time to cure the arrearage.

10. The court also found that cause existed because of lack of adequate protection because the Debtor was not making post-petition rent payments to J & F Partners.

11. Section 1112(b) of the Bankruptcy Code provides as follows regarding dismissal:

. . . [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 **or dismiss a case under this chapter, whichever is in the best interests of creditors** and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

12. “Cause” is defined in Section 1112(b)(4) as follows:

For purposes of this subsection, the term “cause” includes –

(A) **Substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;**

* * * * *

(E) **Failure to comply with an order of the court;**

13. Cause for dismissal exists in this case because the Debtor has no ability to reorganize without a valid lease covering the property owned by J & F Partners, which can be assumed.

14. The Debtor cannot cure the arrearage to assume the lease as required under the Bankruptcy Code.

15. In addition, the Debtor's proposed cash collateral usage shows a continuing loss to the estate and a projected negative balance for every month for March through April. The projections do include any payments being made to J & F Partners on the arrearage. There is no way this Debtor can reorganize.

16. Furthermore, the record is replete with the Debtor's failure to comply with an order of the court:

- a. The Debtor failed to provide required insurance at the beginning of the case;
- b. The Debtor has failed to provide information regarding transfers to the Debtor's principal, Reema Owens
- c. Debtor failed to provide tax returns, bank statements, accounts receivable or a list of personal property.
- d. Debtor failed to provide copies of inspections by any government agency.
- e. The Debtor failed to provide copies of management agreements with Reema Owens, promissory notes entered into between the Debtor and Reema Owens.
- f. The Debtor failed to provide copies of profit, loss and balance sheets for 2014 through 2016.

17. Additionally, Debtor's counsel failed to appear at the continued hearing on the BA's Motion to Dismiss.

18. This Debtor has substantially failed to comply with this Court's Orders regarding an operating Chapter 11.

19. Therefore, cause exists for dismissing this case.

20. As counsel for J & F Partners informed this Court at the continued hearing on the Motion to Dismiss, J & F Partners attempted to obtain an Order of Ejectment before a Clerk of Court in Forsyth County. J & F Partners moved forward on its Motion to Evict on February 9, 2017 before the Clerk of Court of Forsyth County. The Clerk of Court referred the matter to a District Court Judge.

21. Before the hearing was scheduled before the District Court Judge, Debtor filed a Motion for Temporary Restraining Order in Raintree Healthcare of Winston-Salem, LLC v. J & F Partners, LLC, 16-CVS-7811 (the “Raintree State Court Litigation”). A hearing has not yet been held on the request for a restraining order.

22. Due to the continued delay and difficulty in enforcing its state law remedies and taking control of the facility and because any refiling will not result in a successful reorganization, J & F Partners requests that this court ban any refiling by this Debtor in this Court for a period of six months from the entry of any order dismissing the case.

WHEREFORE, J & F Partners, LLC prays that this Court enter an order dismissing this case and banning the Debtor from refiling for a period of six months.

This the 1st day of March, 2017.

/s/ Constance L. Young

Constance L. Young (N.C. State Bar No. 16115)

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Attorneys for J & F Partners, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of March, 2017, a copy of the foregoing was served via the Court's CM/ECF system as follows:

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/s/ Constance L. Young

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NOTICE OF HEARING

PLEASE TAKE NOTICE that J&F Partners, creditor herein, has filed a *Motion to Dismiss Case* (the “Motion”).

PLEASE TAKE FURTHER NOTICE that your rights may be affected by the Motion. You should read the Motion carefully and discuss it with your attorney. If you do not have an attorney, you may wish to consult one.

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held before the Honorable Laura T. Beyer at the United States Bankruptcy Court, Charles Jonas Federal Building, Courtroom 1-5, 401 West Trade Street, Charlotte, North Carolina on **WEDNESDAY, MARCH 15, 2017, AT 9:30 A.M. (EST)**.

PLEASE TAKE FURTHER NOTICE that the Court may grant the relief requested in the Motion at said hearing. No further notice will be given.

This the 1st day of March, 2017.

/s/ Constance L. Young

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